



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Addendum to and Assignment of Sublease Agreement to Operate the Golf Driving Range

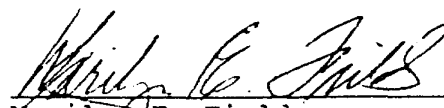
MEETING DATE: January 6, 1993

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: By Council resolution, approve the addendum to and Assignment of Sublease Agreement to Operate the Golf Driving Range from George Sakurai to Kenneth Choo for the balance of the current lease agreement that ends June 30, 1993.

BACKGROUND INFORMATION: Some two and a half months ago, the Sub-Lessee, George Sakurai, approached me asking for permission to turn over the remainder of his lease to operate said driving range to Kenneth Choo. After meeting with both parties and Graeme Stewart, Executive Director of the Grape and Wine Festival, I feel comfortable in recommending that the transfer take place. At the conclusion of the current lease (June 30, 1993), we will at that time decide whether or not to continue with Mr. Choo as the Driving Range Operator.

FUNDING: There is no funding other than what is addressed in the current lease between the City and the Driving Range Operator.


Marilyn E. Field
Acting Director of Parks and
Recreation Department

MEF:srb

cc: Bob McNatt, City Attorney

APPROVED: 

THOMAS A. PETERSON
City Manager



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ADDENDUM TO AND ASSIGNMENT OF SUBLEASE AGREEMENT
TO OPERATE THE GOLF DRIVING RANGE

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This addendum/assignment is entered into this ____ day of _____, 1993, by and between the City of Lodi, a municipal corporation ("City"), George Sakurai ("Sub-Lessee"), and Kenneth Choo ("Assignee").

W I T N E S S E T H:

WHEREAS, under an agreement entered into on June 6, 1990 between the City of Lodi (City) and George Sakurai (Sub-Lessee), City granted to Sub-Lessee the exclusive right to operate under a sublease, the Golf Driving Range located at 531 East Lockeford Street, Lodi, California, for a term commencing July 1, 1990 and terminating at midnight on June 30, 1993; and

WHEREAS, Sub-Lessee Sakurai now wishes to assign all of his interest in said Lodi Golf Driving Range sublease; and

WHEREAS, Assignee, Kenneth Choo is desirous of assuming Mr. Sakurai's interest in said Golf Driving Range sublease; and

WHEREAS, City and Sub-Lessee agree to such transfer in interest;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. Sub-Lessee George Sakurai hereby assigns and delegates all his right and interest in the Golf Driving Range sublease to the Assignee; and
2. City agrees and consents to the assignment of the sublease by Sub-Lessee to Assignee, including the exclusive right to operate the Golf Driving Range located at 531 East Lockeford Street, Lodi, California, for a term commencing September 1, 1992 and terminating at midnight on June 30, 1993; and
3. Assignee agrees that upon assumption of this sub-lease, he will regularly employ at the facility a golf professional with

teaching approval or credentials issued by the Professional Golfer's Association (PGA).

4. ORIGINAL AGREEMENT INCORPORATED BY REFERENCE.

The original agreement entered into between George Sakurai and the City is attached hereto as Exhibit A and is incorporated by reference and adopted as if fully set forth in this Addendum. All terms of the original agreement shall remain in full force except as provided herein.

5. As consideration for this Agreement, Assignee agrees to pay City a monthly rental as follows:

Beginning September 1, 1992 through June 30, 1993, \$500.00 per current month, due and payable by the 10th of each month.

6. Assignee hereby acknowledges that he has read the Master Lease entered into July 1, 1990 and terminating June 30, 1993, attached hereto as Exhibit B and incorporated herein by reference, wherein Lodi Grape Festival and National Wine Show, Inc. is referred to as Lessor and City as Lessee, and which lease covers the property hereinabove referred to. Assignee does hereby agree to be bound by the terms of said Master Lease insofar as said terms affect his operation and use of said property.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY

CITY OF LODI,
a municipal corporation

SUB-LESSEE

THOMAS A. PETERSON
City Manager

GEORGE SAKURAI

ATTEST:

ASSIGNER

ALICE M. REIMCHE
City Clerk

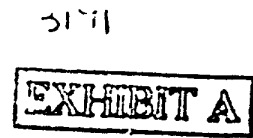
KENNETH CHOO

Approved As To Form:

BOB McNATT
City Attorney

Attachments -- Exhibit A Sublease Agreement dated June 6, 1990
Exhibit B Lease Agreement dated July 1, 1990

AGRFESTI.6/TXTA.01V



CITY OF LODI AND GEORGE SAKURAI AGREEMENT
SUBLEASE AGREEMENT TO OPERATE THE GOLF DRIVING RANGE
JULY 1, 1990 to JUNE 30, 1993

A G R E E M E N T

THIS AGREEMENT made and entered into as of the 6th day of June, 1990, by and between the CITY OF LODI, a municipal corporation, hereinafter called First Party, and GEORGE SAKURAI, hereinafter called Second Party.

W I T N E S S E T H:

First Party does hereby grant to Second Party the exclusive right to operate the GOLF DRIVING RANGE located at 531 East Lockeford Street, Lodi, California, for a term commencing July 1, 1990, and terminating at midnight on June 30, 1993, on the following terms and conditions.

(1) If First Party renews its Master Lease entered into July 1, 1990 with the Lodi Grape Festival and National Wine Show, Second Party will have an option to renew this Agreement for a period of one year upon expiration of this Agreement, upon giving to First Party 60 days prior to end of term, a written notice of intent to renew, at which time both parties hereto shall have the opportunity to evaluate this Agreement for continuance and/or adjustments and to negotiate monthly rental

rate, golf ball rental percentage rate, evaluate general operations and upkeep of driving range area.

(2) As consideration for this Agreement, Second Party agrees to pay First Party a monthly rental as follows:

Beginning July 1, 1990 through June 30, 1993, \$450.00 per current month, due and payable by the 10th of each month.

(3) Second Party to pay to First Party commencing July 1, 1990 through June 30, 1993, ten percent (10%) of the gross revenue received for the rental of balls, which 10% payment is due the First Party, payable with the monthly rental payment on the 10th day of each month for the previous month's rental of balls. Should any other new operation become a part of said driving range, it shall require approval by the First Party's representative and will be up for negotiation as to rental fee or percentage return to First Party.

(4) Second Party to pay to First Party for any non-payment of rent beyond the 10th day of each month, and/or non-payment of the previous month's gross revenue of rental of balls, a service charge of five percent (5%) of any amount due and payable.

(5) Second Party shall keep and maintain accurate records and books of accounts of all receipts and disbursements and does hereby give to the City or its authorized agents, the right to examine and audit said

records and books at any time City desires. Second Party will complete monthly records on forms provided by the City, which must accompany monthly gross receipts payment.

(6) Second Party agrees to maintain in full force during the term hereof a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi as an Additional Insured, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Second Party or Second Party's agents or employees, in the implementation of this Agreement. The minimum limits of such insurance shall be \$500,000/\$1,000,000 Bodily Injury; \$50,000 Property Damage, or \$1,000,000 combined single limit. In addition to the Additional Named Insured Endorsement on Second Party's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

Lessor further agrees and stipulates that any insurance coverage provided to the City of Lodi under the provisions of this agreement shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code § 810 et seq.). 'Claims made' coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsements shall be in the City Attorney's hands on or before the time of the execution of this Agreement, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or as an endorsement, that the insurance certificate is an insurance certificate for the GOLF DRIVING RANGE. All requirements herein provided shall appear either in the body of the insurance certificate or as an endorsement and shall specifically bind the insurance carrier.

(7) Second Party shall not allow alcoholic beverages to be sold or consumed on the premises.

(8) Second Party shall provide and furnish, free of charge to patrons, necessary golf clubs.

(9) Second Party shall use 80 or below compression golf balls ONLY, suitable for a golf driving range operation.

(10) Second Party shall keep said GOLF DRIVING RANGE open to the public six days each week. Days of operation and times said Driving Range shall be open to the public will be determined by the First Party and Second Party representatives who will consider operational hours for Spring/Summer and Fall/Winter seasons.

(11) Second Party shall post on the premises, daily hours of operation. Said daily hours of operation are to be as agreed upon between the City of Lodi City Manager or his designee, and Second Party. Second Party must adhere to agreed-upon posted hours of operation. Failure of Second Party to adhere to agreed-upon posted daily hours shall constitute grounds for First Party to terminate and cancel this Agreement.

(12) Second Party shall keep said premises in a clean and neat condition at all times and to properly and at seasonal times water the grass area of said GOLF DRIVING RANGE.

(13) First Party covenants and agrees to do the following:

- a) Cut grass at GOLF DRIVING RANGE, as per schedule mutually agreed upon
- b) Furnish utilities, install, and replace all necessary light bulbs
- c) Maintain general property and buildings.

(14) Second Party does hereby acknowledge that all improvements and structures located on said premises are the property of First Party. Second party will confer with and seek approval on any and all improvements to said property and/or buildings prior to rehabilitation or construction of same. It will be the financial responsibility of Second Party to make adjustments or improvements to said property/building.

(15) Second Party does hereby acknowledge that he has read the Master Lease entered into July 1, 1990 and terminating June 30, 1993, attached hereto as Exhibit "A" and incorporated herein by reference, wherein Lodi Grape Festival and National Wine Show, Inc. is referred to as Lessor and First Party as Lessee, and which lease covers the property hereinabove referred to. Second Party does hereby agree to be bound by the terms of said Master Lease insofar as said terms affect his operation and use of said property by Second Party.

(16) In the event that Second Party fails to comply with any of the foregoing covenants and/or conditions, First Party shall then have the right to terminate and cancel this Agreement, it being understood and agreed that First Party shall be the sole judge as to whether the terms of this Agreement are being met.


(17) It is understood that Second Party shall have no right or authority to assign or sub-lease the property hereinabove referred to, and no such assignment or sub-lease will be permitted without the


approval of the First Party. First Party agrees that its approval or denial must be on a reasonable basis.

(17) Upon the conclusion of the term of this Agreement, all conditions of this Agreement shall be reevaluated and/or renegotiated as to property rental rate, ball rental percentage rate and/or any other conditions of this Agreement deemed requiring adjusting, reevaluation, or agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first hereinabove written.

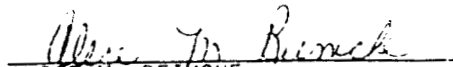
CITY OF LODI, a municipal corporation
First Party


THOMAS A. PETERSON
City Manager

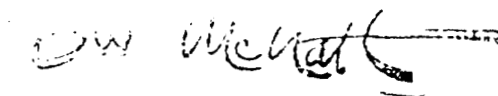

GEORGE SAKURAI
Second Party


RON WILLIAMSON
Director, Parks and Recreation

ATTEST:


ALICE M. REIMCHE
City Clerk

Approved As To Form:


BOB McNATT
City Attorney

AGRFESTI.4/TXTA.01V

A 90-1294

CITY OF LODI AND LODI GRAPE FESTIVAL AND NATIONAL WINE SHOW

LEASE AGREEMENT FOR GOLF DRIVING RANGE

JULY 1, 1990 TO JUNE 30, 1993

LEASE

THIS LEASE, made and entered into this 1st day of July 1990, by and between the LODI GRAPE FESTIVAL & NATIONAL WINE SHOW, a non-profit corporation, hereinafter called LESSOR, and the CITY OF LODI, a municipal corporation of the State of California, hereinafter called LESSEE:

WITNESSETH THAT:

1. LESSOR hereby leases unto LESSEE that certain real property situate in the City of Lodi, County of San Joaquin, State of California, more particularly described as follows:

The East 525 feet of the following described parcel: Commencing at the Southeast corner of the Northeast 1/4 of Section 1, Township 3 North Range 6 East, along the East line of Section 1 North 660 feet; thence N. 89 degrees 41' 30" W., 1320 feet; thence 749.1 feet; thence N. 86 degrees 26' E., 1322.6 feet to the point of beginning and containing 21.35 acres of land.

(Hereinafter known as "the facility".)

2. It is understood that said facility shall be used by LESSEE only for the purpose of conducting a golf driving range, and/or other

sports-type operations, along with such other customary auxiliary services as are generally provided at such facility.

LESSOR reserves the right to approve or disapprove any SUB-LESSEE.

3. This lease shall commence as of July 1, 1990, and terminate on the 30th day of June, 1993.

4. It is understood that LESSEE will sublet said facility to an individual or individuals for the purpose of operating said golf driving range, and/or other related sports activity, and that as a part of said rental, LESSEE shall be entitled to a percentage of the receipts from the use of the facility. As rent for this lease, it is understood and agreed that LESSEE shall pay to LESSOR fifty per cent (50%) of all of the revenue received by LESSEE from the operator of the facility for the rental of the golf balls. Rent from any additional sports enterprises would be negotiable. LESSEE shall pay said rent to LESSOR monthly or immediately after receiving receipts from Sub-LESSEE. It is expressly understood that no other sub-letting of the property by the LESSEE or its Sub-LESSEE shall be permitted.

5. It is understood and agreed that all surface improvements on the demised premises, including buildings, poles and lights, are the property of LESSEE and may be removed by LESSEE at the termination of this lease or sooner, provided that the LESSEE is not in default in any of the terms and provisions hereof.

6. It is understood and agreed that neither the LESSEE nor Sub-LESSEE will attach any permanent buildings or fixtures to the grounds without first obtaining written permission of the LESSOR.

7. It is understood and agreed that neither LESSEE nor Sub-LESSEE of said facility shall be entitled to use or occupy said land during the annual Grape Festival and Harvest Fair, i.e., the three days immediately preceding the opening day of the Festival and the two days following the Festival, and that neither LESSEE nor Sub-LESSEE is to water the lawn area for three days prior to the first day of the Festival. Watering of the lawn area will not be reinstituted until after the Festival and said facility is returned to Sub-LESSEE as it was received. The area commonly known as the putting green may be watered during the time of the Festival.

8. It is understood and agreed that, in the event LESSOR rents the Festival grounds for major events requiring use of the facility, LESSEE and Sub-LESSEE will suspend operation of the facility and will permit LESSOR full use of the lawn area for use as may benefit LESSOR. LESSOR is to return lawn area to LESSEE in clean condition within 48 hours of the conclusion of said event. Neither LESSEE nor Sub-LESSEE shall water the lawn area for three days prior to the first day of each such event. For the privilege of preemption, LESSOR agrees to reimburse Sub-LESSEE at the rate of \$100.00 (One Hundred Dollars) per day of actual use by LESSOR, it being understood this provision shall not apply to the annual Grape Festival period, the week preceding and two days following. In no event shall LESSOR preempt LESSEE or

Sub-LESSEE more than five (5) events per year, exclusive of the annual Grape Festival period as identified in paragraph 7.

9. It is understood and agreed that the LESSOR may cancel this lease upon giving the LESSEE twelve (12) months' written notice prior thereof. It is understood that the same conditions would prevail should LESSEE want to terminate.

10. If for any reason the LESSEE shall terminate its sub-lease with the facility operator of record at time of this Agreement, it is understood that no new sub-lease will extend beyond the expiration time of this document.

11. LESSEE covenants and agrees to properly care for, water and mow the present lawn and turf located on the demised property.

12. LESSEE does hereby agree to indemnify, defend and save LESSOR harmless from any and all claims for loss, damage, injury or liability to persons or property that may arise during the time that LESSEE or its Sub-LESSEE is using said leased premises. LESSEE agrees, at all times during the continuance of this lease, to maintain public liability and property damage insurance in the amounts of \$1,000,000/\$1,000,000, each occurrence, covering its use, occupancy, and operation of said premises. Such policy or policies shall carry a specific endorsement providing that the LESSORS, its officers and employees, and the County of San Joaquin, State of California are named as additional insureds and that such liability policy or policies are

primary insurance as to any similar insurance carried by the LESSOR. LESSEE shall furnish LESSOR with satisfactory proof of the carriage of insurance required by the LESSOR, and there shall be a specific contractual liability assumed by LESSEE pursuant to the lease. Any policy of insurance required of LESSEE under this lease shall also contain an endorsement providing that at least thirty (30) days' notice must be given in writing to LESSOR of any pending change in the limits of liability or of any cancellation or modification of the policy or policies.

13. LESSEE shall require any Sub-LESSEE to also maintain insurance policies as provided for herein and to provide proof of insurance and all endorsements, as provided herein, to LESSOR.

14. In the event LESSEE is self-insured, LESSEE shall provide a certificate of self-insurance in a form satisfactory to LESSOR.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first hereinabove written.

LESSEE

CITY OF LODI, a municipal
corporation of the State of
California

By Thomas A. Peterson
THOMAS A. PETERSON
City Manager

Ron Williamson
RON WILLIAMSON
Director, Parks and Recreation

ATTEST:

Alice M. Reimche
ALICE M. REIMCHE
City Clerk

APPROVED AS TO FORM:

Bob McNatt
BOB McNATT
City Attorney

LESSOR

LODI GRAPE FESTIVAL AND NATIONAL
WINE SHOW, a non-profit corporation

By Kenneth A. King
President

By Ronald J. Preece
General Manager

APPROVED:

COUNTY OF SAN JOAQUIN, a
political subdivision of the
State of California

By Douglas W. Wilhoit
Chairman DOUGLASS W. WILHOIT
Board of Supervisors

ATTEST: Joretta J. Hayde
Clerk of the Board of
Supervisors of the County
of San Joaquin, State of
California

By Cynthia DeBoutz
Deputy Clerk



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